

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

February 4, 2002

IN RE:

PETITION OF TENNESSEE-AMERICAN WATER
COMPANY FOR APPROVAL OF THE MERGER OF ITS
PARENT, AMERICAN WATER WORKS COMPANY,
INC., WITH A SUBSIDIARY OF RWE
AKTIENGESELLSCHAFT

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DOCKET NO.
01-01116

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on January 8, 2002 for consideration of the *Petition* (the "*Petition*") of Tennessee-American Water Company ("Tennessee-American"), pursuant to the provisions of Tenn. Code Ann. § 65-4-113, for approval of a transfer of authority to provide utility services.

Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial

responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .¹

The Petition

In the *Petition*, which was filed on December 12, 2001, Tennessee-American requests that the Authority approve the transfer of ownership of Tennessee-American's parent company, American Water Works, Inc. ("AWW") to Thames Water Aqua Holdings GMBH ("Thames Holdings"), a subsidiary of RWE Aktiengesellschaft ("RWE"), and the resulting transfer of authority to provide utility services. The *Petition* states that Tennessee-American is a Tennessee corporation that holds a certificate of public convenience and necessity authorizing it to provide water service in the City of Chattanooga, Tennessee and certain surrounding areas.

The *Petition* states that AWW is a Delaware corporation that owns water and wastewater distribution companies with operations in approximately 1,300 communities in twenty-two (22) states, serving over 10,000,000 customers. According to the *Petition*, AWW owns all of the outstanding stock of Tennessee-American. In addition, the *Petition* states that AWW provides water, wastewater, and other water resource management services to a population of approximately 12,000,000 people in twenty-eight (28) states and Canada. The

¹ Though Tennessee-American will remain intact and continue to operate pursuant to its current certification, direct ownership and control of Tennessee-American will change. Tenn. Code Ann. § 65-4-101 defines a public utility, as it pertains to water and wastewater utilities, as:

[E]very individual, copartnership, association, corporation, or joint stock company, its lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the state, any... water ... or any other like system, plant or equipment, affected by and dedicated to the public use...

Since the corporation that directly owns, manages, and controls Tennessee-American public utility assets will change, this transaction includes a tacit transfer of Tennessee-American certification. Thus, although the *Petition* seeks Authority approval of a merger, pursuant to Tenn. Code Ann. § 65-4-112, the Authority deems the *Petition* to be Tennessee-American's Petition for approval of a transfer of authority pursuant to Tenn. Code Ann. § 65-4-113.

Petition further states that AWW is the largest publicly traded business in the United States devoted exclusively to water and wastewater resource management services.

According to the *Petition*, RWE is a company organized under the laws of the Federal Republic of Germany, the stock of which is publicly traded on stock exchanges in Germany and Switzerland. The *Petition* states that, through its subsidiaries, RWE operates water, electric, gas, and waste and recycling services worldwide. The *Petition* further states that RWE owns all of the outstanding stock of Thames Holdings, a company organized under the laws of the Federal Republic of Germany, and Thames Holdings owns all of the outstanding stock of Thames Water, plc ("Thames Water"), a public limited corporation organized under the laws of England and Wales. The *Petition* states that Thames Water owns all of the outstanding stock of Apollo Acquisition Company ("Apollo"), a Delaware corporation.

The *Petition* avers that AWW, RWE, Thames Holdings, and Apollo have entered into an Agreement and Plan of Merger, dated September 15, 2001, under the terms of which AWW will become a wholly-owned subsidiary of Thames Holdings, which is, in turn, a wholly-owned subsidiary of RWE. The *Petition* states that there will be no change in Tennessee-American, as Tennessee-American will continue to be a subsidiary of AWW and a Tennessee public utility, and Tennessee-American will continue to operate under its existing tariffs and rates. The *Petition* states that there will be no adverse changes in Tennessee-American's balance sheet or policies, nor any change in its local staffing or day-to-day operations. The *Petition* further states that Tennessee-American will continue to provide safe, adequate, and reliable service in fulfillment of its obligations under Tennessee law.

The *Petition* states that the transaction will provide numerous benefits to Tennessee-American and its customers, including direct access to the advanced utility infrastructure

technology that Thames Water currently uses in addition to the vast financial, technical, and other resources available through Thames Holdings.

Findings

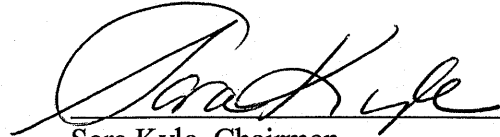
The Directors of the Authority considered this matter at the January 8, 2002 Authority Conference. Based upon careful consideration of the *Petition*, the Authority finds and concludes as follows:

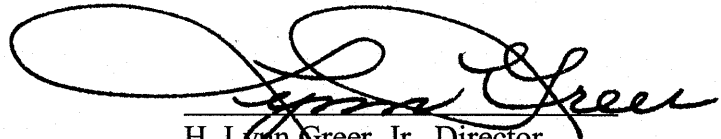
1. The Authority has jurisdiction over the subject matter of this *Petition* pursuant to Tenn. Code Ann. § 65-4-113;
2. Tennessee-American Water Company been granted authority to provide water services in Tennessee;
3. Control of Tennessee-American Water Company's parent, American Water Works, will be transferred to Thames Water Aqua Holdings GMBH, a subsidiary of RWE Aktiengesellschaft, resulting in a transfer of the authority to provide utility services granted to Tennessee-American;
4. Approval of the transfer of authority is appropriate pursuant to the provisions of Tenn. Code Ann. § 65-4-113.

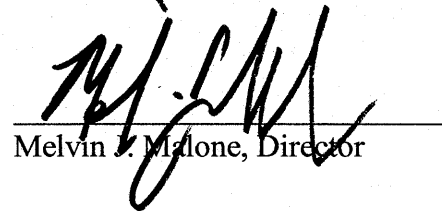
IT IS THEREFORE ORDERED THAT:

1. The *Petition* of Tennessee-American Water Company for approval of the transfer of authority described herein is approved; and
2. Any party aggrieved by the Authority's decision in this matter may file a


Petition for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary